

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JUDITH WEISMAN,

Plaintiff,

**07-CV-1352
(GLS/RFT)**

v.

**NANCY DERIDER, *individually and
d/b/a Derider Billing Services,*
TD BANKNORTH, N.A., and
KEYBANK, N.A.,**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

CARTER, CONBOY LAW FIRM
20 Corporate Woods Boulevard
Albany, New York 12211

NORAH M. MURPHY, ESQ.

FOR THE DEFENDANTS:

NO APPEARANCES

**Gary L. Sharpe
U.S. District Judge**

ORDER TO SHOW CAUSE

The court is in receipt of defendant KeyBank, N.A.'s notice of removal. KeyBank asserts that removal is appropriate under 28 U.S.C. §

1441(a) because this court has original jurisdiction under 28 U.S.C. § 1332 (diversity jurisdiction).

For a district court to assert jurisdiction under § 1332 every plaintiff must be of diverse state citizenship from every defendant. *See Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005). In addition, diversity must exist both when the action is filed and when it is removed. 77 JOHN R. KENNEL, *CORPUS JURIS SECUNDUM* § 65 (2007). It would appear from the notice of removal, however, that both plaintiff Weisman and defendant TD BankNorth, N.A., are citizens of Maine for diversity purposes. If so, this case will be remanded for lack of subject matter jurisdiction.

The court also notes that all defendants must consent to removal from state court. *See Tate v. Mercedes-Benz USA, Inc.*, 151 F. Supp. 2d 222, 223 (N.D.N.Y. 2001). Although “it is not required that all defendants sign the removal petition itself[,]...courts typically require that each defendant timely submit some form of unambiguous written evidence of consent.” *Id.* at 224.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED, that within **fourteen (14) days** of this Order’s filing date, defendant KeyBank, N.A., shall file with the court and serve on all parties a

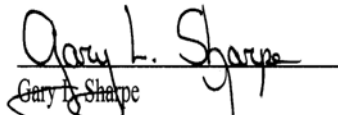
legal memorandum, not to exceed six (6) pages, and relevant exhibits showing cause why the court should not remand this action; and it is further

ORDERED, that within **fourteen (14) days** of service of this order upon them, defendants Nancy Derider and TD Banknorth, N.A., may similarly file and serve legal memoranda, not to exceed six (6) pages, relevant to the question of this court's jurisdiction; and it is further

ORDERED, that plaintiff Judith Weisman shall file a response within **fourteen (14) days** of the service upon her of KeyBank's memorandum; and it is further

ORDERED, that KeyBank immediately serve a copy of this Order on all parties and file a corresponding certificate of service.

January 25, 2008
Albany, New York


Gary L. Sharpe
U.S. District Judge